

AMENDED IN SENATE JUNE 26, 2014

AMENDED IN ASSEMBLY MAY 23, 2014

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AMENDED IN ASSEMBLY MARCH 24, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1899

Introduced by Assembly Member Brown

February 19, 2014

An act to amend Sections ~~1569.19~~ and *1569.19*, 1569.50, and *1569.682* of the Health and Safety Code, relating to residential care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1899, as amended, Brown. Residential care facilities for the elderly.

Existing law, the California Residential Care Facilities for the Elderly Act, provides for the licensure and regulation of residential care facilities for the elderly by the State Department of Social Services.

Existing law sets forth the qualifications of a licensee and requires a license to be forfeited by operation of law when the licensee abandons the facility. Existing law also authorizes the department to deny an application for, or to suspend or revoke a license upon specified grounds, including conduct inimical to the health, morals, welfare, or safety of an individual in or receiving services from a facility. Existing law authorizes a person whose license has been revoked to petition the department for reinstatement of the license after one year has elapsed since the revocation. Under existing law, if an application for a license

indicates that the applicant was previously issued a license to operate a residential care facility for the elderly or specified other licenses, and that license was revoked within the last 2 years, the department is required to cease reviewing the application until 2 years has elapsed since the revocation.

~~This bill would make a person whose license is revoked or forfeited for abandonment of the facility ineligible for reinstatement of the license.~~

This bill would additionally exclude a licensee, who abandons the residential care facility for the elderly and the residents in care resulting in an immediate and substantial threat to the health and safety of the abandoned residents, from licensure in facilities licensed by the department without the right to petition for reinstatement.

Existing law requires a licensee of a licensed residential care facility for the elderly, prior to transferring a resident of the facility to another facility or to an independent living arrangement as a result of a license forfeiture due to abandonment of the facility, among other things, or a change of use of the facility pursuant to the department's regulations, to take all reasonable steps to transfer affected residents safely, to minimize possible transfer trauma, and to take specified actions. A licensee who fails to comply with these requirements is subject to certain penalties, including, but not limited to, civil penalties in the amount of \$100 per violation per day for each day that the licensee is in violation, until the violation has been corrected.

This bill, on and after January 1, 2015, would additionally exclude a licensee, who fails to comply with the above provisions and abandons the residential care facility for the elderly and the residents in care resulting in an immediate and substantial threat to the health and safety of the abandoned residents, from licensure in facilities licensed by the department without the right to petition for reinstatement.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1569.19 of the Health and Safety Code
- 2 is amended to read:
- 3 1569.19. A license shall be forfeited by operation of law prior
- 4 to its expiration date when one of the following occurs:
- 5 (a) The licensee sells or otherwise transfers the facility or facility
- 6 property, except when change of ownership applies to transferring

1 of stock when the facility is owned by a corporation and when the
2 transfer of stock does not constitute a majority change in
3 ownership. The sale of a facility shall be subject to the requirements
4 of this chapter.

5 (b) The licensee surrenders the license to the department.

6 (c) The licensee moves a facility from one location to another.
7 The department shall develop regulations to ensure that the
8 facilities are not charged a full licensing fee and do not have to
9 complete the entire application process when applying for a license
10 for the new location.

11 (d) The licensee is convicted of an offense specified in Section
12 220, 243.4, or 264.1, or paragraph (1) of Section 273a, Section
13 273d, 288, or 289 of the Penal Code, or is convicted of another
14 crime specified in subdivision (c) of Section 667.5 of the Penal
15 Code.

16 (e) The licensee dies. When a licensee dies, the continued
17 operation shall be subject to the requirements of Section 1569.193.

18 (f) The licensee abandons the facility. ~~A license forfeited~~
19 ~~pursuant to this subdivision shall not be eligible for reinstatement~~
20 ~~on or after January 1, 2015. A licensee who abandons the facility~~
21 ~~and the residents in care resulting in an immediate and substantial~~
22 ~~threat to the health and safety of the abandoned residents, in~~
23 ~~addition to forfeiture of the license pursuant to this section, shall~~
24 ~~be excluded from licensure in facilities licensed by the department~~
25 ~~without the right to petition for reinstatement.~~

26 SEC. 2. Section 1569.50 of the Health and Safety Code is
27 amended to read:

28 1569.50. (a) The department may deny an application for a
29 license or may suspend or revoke a license issued under this chapter
30 upon any of the following grounds and in the manner provided in
31 this chapter:

32 (1) Violation by the licensee of this chapter or of the rules and
33 regulations adopted under this chapter.

34 (2) Aiding, abetting, or permitting the violation of this chapter
35 or of the rules and regulations adopted under this chapter.

36 (3) Conduct that is inimical to the health, morals, welfare, or
37 safety of either an individual in or receiving services from the
38 facility or the people of the State of California.

1 (4) The conviction of a licensee, or other person mentioned in
2 Section 1569.17 at any time before or during licensure, of a crime
3 as defined in Section 1569.17.

4 (5) Engaging in acts of financial malfeasance concerning the
5 operation of a facility, including, but not limited to, improper use
6 or embezzlement of client moneys and property or fraudulent
7 appropriation for personal gain of facility moneys and property,
8 or willful or negligent failure to provide services for the care of
9 clients.

10 (b) The director may temporarily suspend a license, prior to a
11 hearing when, in the opinion of the director, the action is necessary
12 to protect residents or clients of the facility from physical or mental
13 abuse, abandonment, or any other substantial threat to health or
14 safety. The director shall notify the licensee of the temporary
15 suspension and the effective date of the temporary suspension and
16 at the same time shall serve the provider with an accusation. Upon
17 receipt of a notice of defense to the accusation by the licensee, the
18 director shall, within 15 days, set the matter for hearing, and the
19 hearing shall be held as soon as possible but not later than 30 days
20 after receipt of the notice. The temporary suspension shall remain
21 in effect until the time the hearing is completed and the director
22 has made a final determination on the merits. However, the
23 temporary suspension shall be deemed vacated if the director fails
24 to make a final determination on the merits within 30 days after
25 the original hearing has been completed.

26 ~~(e) A license that is revoked pursuant to this section due to the~~
27 ~~licensee's abandonment of the facility shall not be eligible for~~
28 ~~reinstatement on or after January 1, 2015.~~

29 *(c) A licensee who abandons the facility and the residents in*
30 *care resulting in an immediate and substantial threat to the health*
31 *and safety of the abandoned residents, in addition to revocation*
32 *of the license pursuant to this section, shall be excluded from*
33 *licensure in facilities licensed by the department without the right*
34 *to petition for reinstatement.*

35 *SEC. 3. Section 1569.682 of the Health and Safety Code is*
36 *amended to read:*

37 1569.682. (a) A licensee of a licensed residential care facility
38 for the elderly shall, prior to transferring a resident of the facility
39 to another facility or to an independent living arrangement as a
40 result of the forfeiture of a license, as described in subdivision (a),

(b), or (f) of Section 1569.19, or a change of use of the facility pursuant to the department's regulations, take all reasonable steps to transfer affected residents safely and to minimize possible transfer trauma, and shall, at a minimum, do all of the following:

(1) Prepare, for each resident, a relocation evaluation of the needs of that resident, which shall include both of the following:

(A) Recommendations on the type of facility that would meet the needs of the resident based on the current service plan.

(B) A list of facilities, within a 60-mile radius of the resident's current facility, that meet the resident's present needs.

(2) Provide each resident or the resident's responsible person with a written notice no later than 60 days before the intended eviction. The notice shall include all of the following:

(A) The reason for the eviction, with specific facts to permit a determination of the date, place, witnesses, and circumstances concerning the reasons.

(B) A copy of the resident's current service plan.

(C) The relocation evaluation.

(D) A list of referral agencies.

(E) The right of the resident or resident's legal representative to contact the department to investigate the reasons given for the eviction pursuant to Section 1569.35.

(F) The contact information for the local long-term care ombudsman, including address and telephone number.

(3) Discuss the relocation evaluation with the resident and his or her legal representative within 30 days of issuing the notice of eviction.

(4) Submit a written report of any eviction to the licensing agency within five days.

(5) Upon issuing the written notice of eviction, a licensee shall not accept new residents or enter into new admission agreements.

(6) (A) For paid preadmission fees in excess of five hundred dollars (\$500), the resident is entitled to a refund in accordance with all of the following:

(i) A 100-percent refund if preadmission fees were paid within six months of notice of eviction.

(ii) A 75-percent refund if preadmission fees were paid more than six months but not more than 12 months before notice of eviction.

1 (iii) A 50-percent refund if preadmission fees were paid more
2 than 12 months but not more than 18 months before notice of
3 eviction.

4 (iv) A 25-percent refund if preadmission fees were paid more
5 than 18 months but less than 25 months before notice of eviction.

6 (B) No preadmission refund is required if preadmission fees
7 were paid 25 months or more before the notice of eviction.

8 (C) The preadmission refund required by this paragraph shall
9 be paid within 15 days of issuing the eviction notice. In lieu of the
10 refund, the resident may request that the licensee provide a credit
11 toward the resident's monthly fee obligation in an amount equal
12 to the preadmission fee refund due.

13 (7) If the resident gives notice five days before leaving the
14 facility, the licensee shall refund to the resident or his or her legal
15 representative a proportional per diem amount of any prepaid
16 monthly fees at the time the resident leaves the facility and the
17 unit is vacated. Otherwise the licensee shall pay the refund within
18 seven days from the date that the resident leaves the facility and
19 the unit is vacated.

20 (8) Within 10 days of all residents having left the facility, the
21 licensee, based on information provided by the resident or
22 resident's legal representative, shall submit a final list of names
23 and new locations of all residents to the department and the local
24 ombudsman program.

25 (b) If seven or more residents of a residential care facility for
26 the elderly will be transferred as a result of the forfeiture of a
27 license or change in the use of the facility pursuant to subdivision
28 (a), the licensee shall submit a proposed closure plan to the
29 department for approval. The department shall approve or
30 disapprove the closure plan, and monitor its implementation, in
31 accordance with the following requirements:

32 (1) Upon submission of the closure plan, the licensee shall be
33 prohibited from accepting new residents and entering into new
34 admission agreements for new residents.

35 (2) The closure plan shall meet the requirements described in
36 subdivision (a), and describe the staff available to assist in the
37 transfers. The department's review shall include a determination
38 as to whether the licensee's closure plan contains a relocation
39 evaluation for each resident.

1 (3) Within 15 working days of receipt, the department shall
2 approve or disapprove the closure plan prepared pursuant to this
3 subdivision, and, if the department approves the plan, it shall
4 become effective upon the date the department grants its written
5 approval of the plan.

6 (4) If the department disapproves a closure plan, the licensee
7 may resubmit an amended plan, which the department shall
8 promptly either approve or disapprove, within 10 working days
9 of receipt by the department of the amended plan. If the department
10 fails to approve a closure plan, it shall inform the licensee, in
11 writing, of the reasons for the disapproval of the plan.

12 (5) If the department fails to take action within 20 working days
13 of receipt of either the original or the amended closure plan, the
14 plan, or amended plan, as the case may be, shall be deemed
15 approved.

16 (6) Until such time that the department has approved a licensee's
17 closure plan, the facility shall not issue a notice of transfer or
18 require any resident to transfer.

19 (7) Upon approval by the department, the licensee shall send a
20 copy of the closure plan to the local ombudsman program.

21 (c) (1) If a licensee fails to comply with the requirements of
22 this section, and if the director determines that it is necessary to
23 protect the residents of a facility from physical or mental abuse,
24 abandonment, or any other substantial threat to health or safety,
25 the department shall take any necessary action to minimize trauma
26 for the residents, including caring for the residents through the use
27 of a temporary manager as provided for in Section 1569.481 when
28 the director determines the immediate relocation of the residents
29 is not feasible based on transfer trauma or other considerations
30 such as the unavailability of alternative placements. The department
31 shall contact any local agency that may have assessment placement,
32 protective, or advocacy responsibility for the residents, and shall
33 work together with those agencies to locate alternative placement
34 sites, contact relatives or other persons responsible for the care of
35 these residents, provide onsite evaluation of the residents, and
36 assist in the transfer of residents.

37 (2) The participation of the department and local agencies in
38 the relocation of residents from a residential care facility for the
39 elderly shall not relieve the licensee of any responsibility under
40 this section. A licensee that fails to comply with the requirements

1 of this section shall be required to reimburse the department and
2 local agencies for the cost of providing the relocation services or
3 the costs incurred in caring for the residents through the use of a
4 temporary manager as provided for in Section 1569.481. If the
5 licensee fails to provide the relocation services required in this
6 section, then the department may request that the Attorney
7 General's office, the city attorney's office, or the local district
8 attorney's office seek injunctive relief and damages in the same
9 manner as provided for in Chapter 5 (commencing with Section
10 17200) of Part 2 of Division 7 of the Business and Professions
11 Code, including restitution to the department of any costs incurred
12 in caring for the residents through the use of a temporary manager
13 as provided for in Section 1569.481.

14 (d) A licensee who fails to comply with requirements of this
15 section shall be liable for the imposition of civil penalties in the
16 amount of one hundred dollars (\$100) per violation per day for
17 each day that the licensee is in violation of this section, until such
18 time that the violation has been corrected. The civil penalties shall
19 be issued immediately following the written notice of violation.
20 However, if the violation does not present an immediate or
21 substantial threat to the health or safety of residents and the licensee
22 corrects the violation within three days after receiving the notice
23 of violation, the licensee shall not be liable for payment of any
24 civil penalties pursuant to this subdivision related to the corrected
25 violation.

26 (e) *A licensee, on and after January 1, 2015, who fails to comply*
27 *with this section and abandons the facility and the residents in*
28 *care resulting in an immediate and substantial threat to the health*
29 *and safety of the abandoned residents, in addition to forfeiture of*
30 *the license pursuant to Section 1569.19, shall be excluded from*
31 *licensure in facilities licensed by the department without the right*
32 *to petition for reinstatement.*

33 (e)

34 (f) A resident of a residential care facility for the elderly covered
35 under this section, may bring a civil action against any person,
36 firm, partnership, or corporation who owns, operates, establishes,
37 manages, conducts, or maintains a residential care facility for the
38 elderly who violates the rights of a resident, as set forth in this
39 section. Any person, firm, partnership, or corporation who owns,
40 operates, establishes, manages, conducts, or maintains a residential

1 care facility for the elderly who violates this section shall be
2 responsible for the acts of the facility's employees and shall be
3 liable for costs and attorney's fees. Any such residential care
4 facility for the elderly may also be enjoined from permitting the
5 violation to continue. The remedies specified in this section shall
6 be in addition to any other remedy provided by law.

7 ~~(f)~~

8 (g) This section shall not apply to a licensee that has obtained
9 a certificate of authority to offer continuing care contracts, as
10 defined in paragraph (8) of subdivision (c) of Section 1771.

O